

### **REMARKS**

At the outset, the Examiner's rejections are directed to claims 1-11. However, Application filed a Preliminary Amendment on July 21, 2003 that cancelled claims 1-11 and entered new claims 12-21 as listed above. This Preliminary Amendment was entered by the USPTO in the PAIR database. Accordingly, Applicants will consider the Examiner's rejection of cancelled claims 1-11 as if that rejection had been applied to pending claims 12-21.

#### **1. The Claims are Novel**

The claims stand rejected as being anticipated by Cain et al., WO97/18320. The Examiner specifically points to Example 6 of Cain et al. and alleges that "since the mixture also contains 22.1% of the 10,12 isomer, this mixture would be inherently expected to have less than 2% of the 8,10 and 11,13 isomers, as claimed." Office Action at p. 2.

The Examiner's attention is respectfully directed to the Declaration of Asgeir Saebo, attached hereto as Appendix 1. This Declaration was previously submitted in U.S. Appl. No. 09/438,104, which application is related to the present application. As detailed in the Saebo Declaration, the experimental conditions of Example 6 of Cain et al. were replicated. However, this conjugation method resulted in a CLA composition containing 3.29% 11,13 CLA. This amount is substantially higher than the claimed limitation of less than 2% 8,10-octadecadienoic acid and 11,13 octadecadienoic acid isomers in the aggregate. Applicants respectfully submit that this is persuasive evidence that the methods of Cain et al. do not inherently provide the claimed CLA compositions. As such, this ground of rejection should be removed.

#### **2. The Claims are Nonobvious**

The claims are also rejected as obvious over Cain et al. The USPTO has previously rejected the claims of related U.S. Applications 09/271,024 and 09/132,593 over Cain et al. in combination with several other references. Applicants successfully appealed these rejections and have attached the decisions of the Board of Patent Appeals and Interferences hereto for the Examiner's convenience (attached as appendices 2 and 3, respectively). In sum, the Board found that Cain et al. does not teach or suggest the claimed limitation of less than less than 2% 8,10-octadecadienoic acid and 11,13 octadecadienoic acid isomers in the aggregate. (See, e.g., Decision for Appeal No. 2005-1578 (Appl. No. 09/132,593) at pp. 6-9. Because Cain et al. does

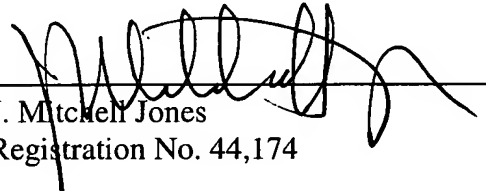
not teach this limitation or suggest the desirability of obtaining the claimed compositions, a prima facie case of obviousness has not been established.

**3. Double Patenting**

Applicants have submitted a terminal disclaimer to obviate the double-patenting rejection.

It is respectfully submitted that the invention as claimed fully meets all requirements and that the claims are worthy of allowance. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, Applicants encourage the Examiner to call the undersigned collect at (608) 218-6900.

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